

AMENDED IN ASSEMBLY APRIL 16, 2015

AMENDED IN ASSEMBLY APRIL 7, 2015

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

ASSEMBLY BILL

No. 226

Introduced by Assembly Member Atkins

**(Coauthors: Assembly Members Chávez, Jones, Maienschein,
Waldron, and Weber)**

(Coauthors: Senators Anderson, Bates, Block, and Hueso)

February 3, 2015

An act to amend Sections 113779, 113789, 113839, 113984, and 114266 of, ~~and~~ to add Sections 113729.5, 113780, and 113794.3 to, and to add Chapter 12.7 (commencing with Section 114378) to Part 7 of Division 104 of, the Health and Safety Code, relating to food safety.

LEGISLATIVE COUNSEL'S DIGEST

AB 226, as amended, Atkins. Retail food safety: fishermen's markets.

Existing law, the California Retail Food Code, establishes uniform health and sanitation standards for, and provides for regulation by the State Department of Public Health of, retail food facilities and various types of food. Among other things, the code requires nonpermanent food facilities that handle nonprepackaged food to protect the food from contamination and limit the display and handling of nonprepackaged food. The code also establishes specified food safety and sanitation requirements for certified farmers' markets governing food preparation, storage, and sampling, among other things. Under existing law, local health agencies are primarily responsible for enforcing the code. A person who violates any provision of the code is guilty of a misdemeanor, except as otherwise provided.

This bill would create a new type of nonpermanent food facility, defined as a “fishermen’s market,” that would be a food facility operated by a licensed commercial ~~fisherman, a registered aquaculturist,~~ *fisherman* or an entity representing California seafood producers, that sells only edible aquatic plants, raw fresh fish, or fresh frozen fish, legally caught by California-licensed commercial fishermen or harvested by California-registered aquaculturists, directly to consumers. The bill would establish and impose food safety and sanitation requirements upon a fishermen’s market. The bill would authorize only a licensed commercial ~~fisherman, a registered aquaculturist,~~ *fisherman* or an entity representing California seafood producers to act as the responsible person and sole permitholder for a fishermen’s market, and would require that fisherman ~~a registered aquaculturist,~~ or entity to submit a permit application and site plan, including specified information, to the enforcement agency at least 2 weeks prior to the operation of the fishermen’s market. The bill would define terms for its purposes and make conforming changes.

By imposing new enforcement requirements on local health agencies, and by creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 113729.5 is added to the Health and
- 2 Safety Code, to read:
- 3 113729.5. “Acceptable market name” means a name that the
- 4 FDA recognizes as a suitable statement of identity, as described
- 5 in Section 101.3 of Title 21 of the Code of Federal Regulations,
- 6 in the labeling of a species. An acceptable market name fairly

1 represents the identity of the species to United States consumers
2 because it is not confusingly similar to the name of another species
3 and because it is not otherwise misleading. An acceptable market
4 name may be any of the following:

5 (a) A common or usual name established by either a history of
6 common usage in the United States or by regulation.

7 (b) The common name.

8 (c) A name specifically coined as the market name for a species.
9 For example, “basa” is the market name coined for *Pangasius*
10 *bocourti*.

11 SEC. 2. Section 113779 of the Health and Safety Code is
12 amended to read:

13 113779. (a) “Fish” means fresh or saltwater finfish,
14 crustaceans, and other forms of aquatic life, other than birds or
15 mammals, and all molluscan shellfish, if intended for human
16 consumption. “Fish” also includes alligator, frog, aquatic turtle,
17 jellyfish, sea cucumber, and sea urchin, and the roe of these
18 animals.

19 (b) “Fish” includes a product derived in whole or in part from
20 fish, including fish that have been processed in any manner.

21 SEC. 3. Section 113780 is added to the Health and Safety Code,
22 to read:

23 113780. “Fishermen’s ~~Market~~ market” means a location that
24 is operated by a commercial fisherman licensed by the Department
25 of Fish and Wildlife or an entity representing California seafood
26 producers, that sells only raw edible aquatic plants, raw fresh fish,
27 or fresh frozen fish, caught by commercial fishermen licensed by
28 the Department of Fish and Wildlife or harvested by
29 California-registered aquaculturists, directly to consumers.

30 SEC. 4. Section 113789 of the Health and Safety Code is
31 amended to read:

32 113789. (a) “Food facility” means an operation that stores,
33 prepares, packages, serves, vends, or otherwise provides food for
34 human consumption at the retail level, including, but not limited
35 to, the following:

36 (1) An operation where food is consumed on or off the premises,
37 regardless of whether there is a charge for the food.

38 (2) A place used in conjunction with the operations described
39 in this subdivision, including, but not limited to, storage facilities
40 for food-related utensils, equipment, and materials.

- 1 (b) “Food facility” includes permanent and nonpermanent food
2 facilities, including, but not limited to, the following:
- 3 (1) Public and private school cafeterias.
 - 4 (2) Restricted food service facilities.
 - 5 (3) Licensed health care facilities, except as provided in
6 paragraph (13) of subdivision (c).
 - 7 (4) Commissaries.
 - 8 (5) Mobile food facilities.
 - 9 (6) Mobile support units.
 - 10 (7) Temporary food facilities.
 - 11 (8) Vending machines.
 - 12 (9) Certified farmers’ markets, for purposes of permitting and
13 enforcement pursuant to Section 114370.
 - 14 (10) Farm stands, for purposes of permitting and enforcement
15 pursuant to Section 114375.
 - 16 (11) Fishermen’s markets.
- 17 (c) “Food facility” does not include any of the following:
- 18 (1) A cooperative arrangement wherein no permanent facilities
19 are used for storing or handling food.
 - 20 (2) A private home, including a cottage food operation that is
21 registered or has a permit pursuant to Section 114365.
 - 22 (3) A church, private club, or other nonprofit association that
23 gives or sells food to its members and guests, and not to the general
24 public, at an event that occurs not more than three days in any
25 90-day period.
 - 26 (4) A for-profit entity that gives or sells food at an event that
27 occurs not more than three days in a 90-day period for the benefit
28 of a nonprofit association, if the for-profit entity receives no
29 monetary benefit, other than that resulting from recognition from
30 participating in an event.
 - 31 (5) Premises set aside for wine tasting, as that term is used in
32 Section 23356.1 of the Business and Professions Code and in the
33 regulations adopted pursuant to that section, that comply with
34 Section 118375, regardless of whether there is a charge for the
35 wine tasting, if no other beverage, except for bottles of wine and
36 prepackaged nonpotentially hazardous beverages, is offered for
37 sale for onsite consumption and no food, except for crackers, is
38 served.
 - 39 (6) Premises operated by a producer, selling or offering for sale
40 only whole produce grown by the producer or shell eggs, or both,

1 provided the sales are conducted on premises controlled by the
2 producer.

3 (7) A commercial food processing establishment as defined in
4 Section 111955.

5 (8) A child day care facility, as defined in Section 1596.750.

6 (9) A community care facility, as defined in Section 1502.

7 (10) A residential care facility for the elderly, as defined in
8 Section 1569.2.

9 (11) A residential care facility for the chronically ill, which has
10 the same meaning as a residential care facility, as defined in Section
11 1568.01.

12 (12) Premises set aside by a beer manufacturer, as defined in
13 Section 25000.2 of the Business and Professions Code, that comply
14 with Section 118375, for the purposes of beer tasting, regardless
15 of whether there is a charge for the beer tasting, if no other
16 beverage, except for beer and prepackaged nonpotentially
17 hazardous beverages, is offered for sale for onsite consumption,
18 and no food, except for crackers, pretzels, or prepackaged food
19 that is not potentially hazardous food is offered for onsite
20 consumption.

21 (13) (A) An intermediate care facility for the developmentally
22 disabled, as defined in subdivisions (e), (h), and (m) of Section
23 1250, with a capacity of six beds or fewer.

24 (B) A facility described in subparagraph (A) shall report any
25 foodborne illness or outbreak to the local health department and
26 to the State Department of Public Health within 24 hours of the
27 illness or outbreak.

28 (14) A community food producer, as defined in Section 113752.

29 SEC. 5. Section 113794.3 is added to the Health and Safety
30 Code, to read:

31 113794.3. "Fresh frozen" means that the food was quickly
32 frozen while still fresh, including immediately after the food had
33 been harvested or fish had been caught.

34 SEC. 6. Section 113839 of the Health and Safety Code is
35 amended to read:

36 113839. "Nonpermanent food facility" means a food facility
37 that operates from a mobile unit or at a nonpermanent location,
38 including, but not limited to, a certified farmers' market, a
39 fishermen's market, a mobile food facility, a mobile support unit,
40 a temporary food facility, or a vending machine.

1 SEC. 7. Section 113984 of the Health and Safety Code is
2 amended to read:

3 113984. (a) Adequate and suitable counter space shall be
4 provided for all food preparation operations.

5 (b) Except as specified in subdivision (c), food preparation shall
6 be conducted within a fully enclosed food facility.

7 (c) Limited food preparation shall be conducted within a food
8 compartment or as approved by the enforcement agency. Subject
9 to subdivision (g), this subdivision does not require an additional
10 food compartment when adding ingredients to a beverage or
11 dispensing into a serving container when the beverage is prepared
12 for immediate service in response to an individual consumer order.

13 (d) Food shall be prepared with suitable utensils and on surfaces
14 that, prior to use, have been cleaned, rinsed, and sanitized as
15 specified in Section 114117 to prevent cross-contamination.

16 (e) Overhead protection shall be provided above all food
17 preparation, food display, warewashing, and food storage areas.

18 (f) All food shall be thawed, washed, sliced, and cooled within
19 an approved fully enclosed food facility.

20 (g) Based upon local environmental conditions, location, and
21 other similar factors, the enforcement officer may establish
22 additional structural or operational requirements, or both, for
23 mobile food facilities as necessary to ensure that foods,
24 food-contact surfaces, and utensils are of a safe and sanitary
25 quality.

26 SEC. 8. Section 114266 of the Health and Safety Code is
27 amended to read:

28 114266. (a) Each permanent food facility shall be fully
29 enclosed in a building consisting of permanent floors, walls, and
30 an overhead structure that meet the minimum standards as
31 prescribed by this part. Food facilities that are not fully enclosed
32 on all sides and that are in operation on January 1, 1985, shall not
33 be required to meet the requirements of this section until the facility
34 is remodeled or has a significant menu change or significant change
35 in its method of operation.

36 (b) Notwithstanding subdivision (a), this section does not require
37 the enclosure of dining areas or any other operation approved for
38 outdoor food service.

(c) Notwithstanding subdivision (a), a produce stand that was in operation prior to January 1, 2007, shall have no more than one side open to the outside air during business hours.

SEC. 9. Chapter 12.7 (commencing with Section 114378) is added to Part 7 of Division 104 of the Health and Safety Code, to read:

CHAPTER 12.7. FISHERMEN'S MARKETS

114378. A fishermen's market shall meet the applicable requirements of Chapter 1 (commencing with Section 113700), Chapter 2 (commencing with Section 113728), Chapter 3 (commencing with Section 113945), Chapter 4 (commencing with Section 113980), Chapter 5 (commencing with Section 114095), Chapter 6 (commencing with Section 114130), Chapter 7 (commencing with Section 114189), Chapter 8 (commencing with Section 114250), and Chapter 13 (commencing with Section 114380), unless exempted as provided in this chapter.

114378.1. (a) Fish sold in a fishermen's market shall be raw and may be displayed whole or eviscerated. A fisherman selling fish in a fishermen's market shall only sell raw edible aquatic plants or fish that he or she caught legally, or that was caught by one or two other licensed commercial fishermen. If a fisherman sells fish caught by another licensed commercial fisherman, the fisherman shall provide a copy of that other fisherman's commercial license and contact information upon the request of the enforcement agency.

(b) A fishermen's market may provide a separate service that fillets, cuts, or packages fish for customers who purchase direct sales of fish within the fishermen's market as a temporary food facility, mobile food facility, or other facility approved by the enforcement agency. A separate health permit is required and applicable requirements for that category of permit shall be met.

(c) Fish parts from the day's operations may be used for bait by a licensed commercial fisherman or registered aquaculturist.

(d) Ice used for refrigeration purposes shall not be used for consumption in food or beverages.

(e) Notwithstanding subdivision (b) and Section 113818, raw fish may be eviscerated at a fishermen's market.

1 114378.2. A fishermen's market shall meet all of the following
2 requirements:

3 (a) Each fishermen's market food booth shall post the name of
4 the fisherman, vessel or farm, and acceptable market name of fish
5 sold so they are legible and clearly visible to patrons.

6 (b) Notwithstanding Section 113953, handwashing facilities for
7 a fishermen's market food both that operates for three consecutive
8 days or less may include a container capable of providing a
9 continuous stream of water from an approved source that leaves
10 both hands free to allow vigorous rubbing with soap and warm
11 water for 10 to 15 seconds, inclusive. A catch basin shall be
12 provided to collect wastewater, and the wastewater shall be
13 properly disposed of according to Section 114197.

14 (c) Handwashing facilities shall be equipped with handwashing
15 cleanser and single-use sanitary towels. A separate receptacle shall
16 be available for towel waste.

17 (d) Notwithstanding Section 114205, potable water shall be
18 available for handwashing and sanitizing as approved by the
19 enforcement agency.

20 (e) Approved toilet and handwashing facilities shall be available
21 within 200 feet of the premises of a fishermen's market or as
22 approved by the enforcement agency.

23 (f) All garbage and refuse shall be stored and disposed of in a
24 manner approved by the enforcement agency.

25 (g) Wastewater shall be disposed of in a facility connected to
26 the public sewer system or in a manner approved by the
27 enforcement agency.

28 (h) Floors shall be constructed of concrete, asphalt, tight wood,
29 or other similar cleanable material kept in good repair.

30 (i) Overhead protection shall be provided over the evisceration
31 process, food storage, food display, and warewashing areas.
32 Overhead protection shall be made of wood, canvas, or other
33 materials that protect the facility from precipitation, dust, bird and
34 insect droppings, and other contaminants.

35 (j) Notwithstanding Section 114095, approved warewashing
36 facilities may be shared if the sink is centrally located and is
37 adjacent to the sharing facilities. The enforcement agency may
38 also approve use of warewashing facilities within a permanent
39 facility if it is located within 200 feet of the premises of the
40 fishermen's market or as approved by the enforcement agency.

1 (k) Food-related and utensil-related equipment shall be located
2 and installed to prevent food contamination.

3 (l) During periods of inoperation, food, food equipment, and
4 utensils shall be stored within a fully enclosed facility approved
5 by the enforcement agency, or in approved food compartments
6 where the food, food equipment, and utensils are protected at all
7 times from contamination, exposure to the elements, ingress of
8 rodents or other vermin, and temperature abuse.

9 114378.3. (a) A permit application and site plan shall be
10 submitted to the enforcement agency at least two weeks prior to
11 the operation of a fishermen's market. Only ~~California-registered~~
12 ~~California-licensed commercial fishermen, California-registered~~
13 ~~aquaculturists, fishermen~~ or an entity representing California
14 seafood producers may act as the responsible person and sole
15 permitholder for a fishermen's market. The site plan shall include
16 all of the following:

17 (1) A map with proposed locations of the fishermen's market
18 food booths, boundaries of the fishermen's market, restrooms,
19 refuse containers, potable water supply faucets, wastewater disposal
20 facilities, and all shared warewashing and hand washing facilities
21 as applicable.

22 (2) Details of the materials and methods used to construct the
23 food booths.

24 (3) Foods that will be handled and dispensed.

25 (4) Procedures for food handling, food temperature control,
26 refuse management, cleaning and sanitizing utensils and equipment,
27 and cleaning structures and premises.

28 (5) Procedures for transporting food to and from the fishermen's
29 market and actions taken to prevent contamination.

30 (6) List of names of licensed commercial fishermen or registered
31 aquaculturists, copies of their licenses or registrations, and a
32 document authorizing the organizer to act as the responsible person
33 and permit holder on their behalf.

34 (b) A fishermen's market may operate adjacent to, or in
35 conjunction with, a food facility or a community event. In those
36 situations, the fishermen's market is only subject to the limitations
37 and requirements of a fishermen's market. The other food facilities
38 remain subject to the limitations and requirements, including
39 separate permit requirements, that are applicable to the type of
40 facility being operated.

1 SEC. 10. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for certain
3 costs that may be incurred by a local agency or school district
4 because, in that regard, this act creates a new crime or infraction,
5 eliminates a crime or infraction, or changes the penalty for a crime
6 or infraction, within the meaning of Section 17556 of the
7 Government Code, or changes the definition of a crime within the
8 meaning of Section 6 of Article XIII B of the California
9 Constitution.
10 However, if the Commission on State Mandates determines that
11 this act contains other costs mandated by the state, reimbursement
12 to local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.